

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

DATED: 12/02/2004

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THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM.

C.R.P.(PD) 271 OF 2003.

AND

C.M.P.No.2063 of 2003.

Shanmugam. ...Petitioner.

-Vs-

1.Vijayarangam.

2.Maheshwari Ammal. ...Respondents.

C.R.P filed under Section 115 of the Civil Procedure Code against the order and decretal order dated 10.12.2002 passed by the learned District Munsif, Gudiyatham, Vellore and made in I.A.No.794 of 2002 in O.S.No. 368 of 1993.

!Miss P.R.Supraja
for Mr.T.R.Rajaraman. .. For Petitioner.

^Mr.V.Raghavachari. .. For Respondents.

:ORDER

The defendant in O.S.No.368 of 1993 on the file of District Munsif, Gudiyatham is the revision petitioner. The defendant filed application under Order 8 Rule 9 and Section 151 C.P.C for the reception of additional written statement and the same came to be dismissed. Aggrieved by the same, the defendant has preferred this Civil Revision Petition.

2.Heard the learned Advocate for the petitioner and the learned Advocate for the respondents.

3.The revision petitioner in the affidavit filed before the trial court has stated that he failed to state certain important facts as he had filed all the documents in another suit in O.S.No. 246 of 1993 on the file of Sub Court, Vellore and the suit was filed against the plaintiffs in this case and others in respect of the suit property and other properties. The petitioner has also stated that he is an illiterate and he does not know to read and write and hence he was unable to give all the details about the title deeds and possession of the suit property and therefore, seeking

permission of the court to file additional written statement. He has also stated that O.S.No.246 of 1 993 on the file of Sub Court, Vellore was transferred to the District Munsif's Court, Gudiyatham due to change of pecuniary jurisdiction and the same is pending as O.S.No.457 of 1996. The petitioner has stated that the facts relating to his title and possession to the suit property are essential to decide the issue in the case and there is no wantonness on his own part. The defendant also filed the additional written statement along with the petition.

4.The respondents herein filed a counter resisting the said petition, stating that suit in O.S.No.246 of 1993 on the file of Sub Court, Vellore was filed in the year 1993 and the defendant filed the written statement only on 4.4.1994. Further, the respondents-plaintiffs closed their evidence on 22.10.2002 and the suit was posted in the list and thereafter only the petitioner-defendant filed the application to file additional written statement and it was done so only with a view to prolong the proceedings, as the petitioner-defendant is in possession and enjoyment of the disputed portion of the suit property. The respondents also contended that the petition has been filed belatedly.

5.Now the question is whether the petitioner-defendant has made out a case for filing additional written statement as prayed for?

6.The learned Advocate for the revision petitioner contends that certain important documents of title deeds were filed in an earlier suit in O.S.No.246 of 1993 on the file of Sub Court, Vellore and only in the said circumstances, the defendant could not give all the details in respect of the suit property and now only he remembered of the previous suit and filed the petition seeking permission of the court to file additional written statement. The revision petitioner also stated that he is an illiterate and there is no wantonness on his part in filing the additional written statement.

7.On the contrary, the learned Advocate for the respondents would contend that the defendant had already filed the written statement and the trial of the suit also commenced and the plaintiffs' evidence was over by 22.10.2002 and subsequently the suit was posted for further proceedings and only at that time the defendant had chosen to file additional written statement with a view to protract the proceedings. The defendant has not explained the delay in filing the additional written statement.

8.The Court below had observed that the defendant has only elaborated in the additional written statement what has been stated in the written statement. Further, it has been observed that the application filed by the defendant after examination of the witnesses on the part of the plaintiffs is highly belated and therefore, the same cannot be allowed and dismissed the petition.

9.Order 8 Rule 8 C.P.C provides for new ground of defence, which states as follows:-

"Any ground of defence, which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off or counter

claim may be raised by the defendant or plaintiff, as the case may be, in his written statement".

10. Order 8 Rule 9 of C.P.C provides for subsequent pleadings, which states as follows:-

"No pleading subsequent to the written statement of a defendant, either by way of defence to a set-off or counter-claim shall be presented except by the leave of the court and upon such terms as the court thinks fit, but the court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same".

This provision enables the defendant to filing of additional written statement; that in the present case the defendant is seeking permission for filing additional written statement on the ground that the relevant documents were filed in some other suit and only in the said circumstances, he could not set forth all his defence in the suit. To avoid further delay and also to prove the bona fides the defendant also filed the additional written statement. The trial court is expected only to consider the bona fide in filing the petition. But in this case the trial court has gone to the extent of discussing the merit of the additional written statement filed by the defendant at the stage itself, which is not proper. As a matter of fact, this is the view expressed in the case of "Jayamma Ramachandra Reddy and another . vs. J.Sathyanarayana and another" (1995 (II) CTC 258), wherein the learned Judge (S.M.ALI MOHAMED.J) has opined instead of allowing the additional counter statement and completing the pleadings, the Rent Controller has gone into the merits of the case which is also not permissible at the stage of filing additional counter statement. I am also of the view that the trial court instead of considering the petition to allow, or not to allow has gone

into the merits of the additional written statement and the same is not permissible at that stage and therefore, the order passed by the trial court deserves to be set aside.

11. The trial court also had observed that the defendant has filed the petition belatedly. The revision petitioner-defendant has explained the delay in filing the petition and the said delay is only bona fide and I do not find any malafide on the part of the defendant. That apart, mere delay in filing the additional written statement will not take away the right of the party. That in order to meet the ends of justice, the parties must be given fair and reasonable opportunity to complete the pleadings as the trial court is the court of first instance where the parties are expected to exhaust their pleadings and in the said context also, I am of the view that the dismissal of the application filed by the defendant is not proper and the same is liable to be set aside.

12. In the above circumstances, the C.R.P is allowed. Consequently, connected C.M.P.No.2063 of 2003 is closed. No costs.

Index:yes
Website:yes

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To

1. The District Munsif,
Gudiyatham, Vellore District.

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